



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,521	03/26/2004	Emmanuel Marilly	Q80686	7535
23373 7590 09/10/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER RUBIN, BLAKE J	
			ART UNIT 2157	PAPER NUMBER
			MAIL DATE 09/10/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/809,521

Applicant(s)

MARILLY ET AL.

Examiner

BLAKE RUBIN

Art Unit

2157

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-33.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Ario Etienne/
Supervisory Patent Examiner, Art Unit 2157

Continuation of 11, does NOT place the application in condition for allowance because:

Response to Arguments

1. Applicant's arguments filed March 27, 2008 have been fully considered but they are not persuasive.
2. With respect to claim 1, applicant argues that Sistanizadeh does not disclose management data, specifically to store management data which are representative of said measured parameter values.
The examiner respectfully disagrees. Sistanizadeh discloses, "an SNMP agent Stores and retrieves management data as defined by the MIB" (column 16, lines 25-25), furthermore, the managed data of Sistanizadeh includes data from, "The measurement service module 161 [which] looks at the raw data from the various monitoring devices, as accumulated by the monitoring service 157" (column 19, lines 5-7), whereby the modules are a part of "the SLM application server 107 relies on a Relational Database 109, which contains information on the Network and Service Topologies, network and service metrics, SLA parameters, customer demarcation points, service scope and boundaries, etc." (column 7, lines 41-44).
The applicant further argues that Sistanizadeh does not disclose, where said adaptation comprises a change to a measurement policy parameter and/or a change to a report transmission policy to said network management system.
The examiner respectfully disagrees. The examiner affirms the argument previously presented, whereby the applicant has written the claim in the alternative (and/or), and Sistanizadeh discloses a change to the measurement policy "as QoS monitoring/reporting and automatic bandwidth increases/decreases" (column 17, lines 50-53).
The applicant further argues that Sistanizadeh does not disclose, adapt[ing]the configuration of said network element according to...chosen rules, known as local assurance rules, defining a local assurance policy.
The examiner respectfully disagrees. Sistanizadeh discloses assurance rules, and a local assurance policy by way of Quality of Service, specifically using the Service Level Agreement (SLA) metrics, which include "Network Availability", "Packet Loss", "Jitter", and "Service Availability" (column 6, lines 15-30). The SLA exemplified in Sistanizadeh anticipates the definition of a local assurance policy as laid out in the Applicant's specification (column 28, lines 21-46).
3. With respect to claim 2, applicant argues that Sistanizadeh does not disclose, adapt[ing] said configuration according to information data coming from at least one other network element.
The examiner respectfully disagrees. Sistanizadeh discloses, "adapt[ing] the customer service to the detected application" (Column 29, lines 40-46) whereby the detected application is receiving information from an analyzer where, "the analyzer 128is a software module running on a separate computer" (column 28, lines 47-50).
4. With respect to claim 3, applicant argues that Sistanizadeh does not disclose, wherein said adaptation comprises a change to a method of operation of said network element.
The examiner respectfully disagrees. Sistanizadeh disclosure of changing the bandwidth per an operation of the customer (column 29, lines 40-46, start of a File Transfer Protocol) anticipates a change in method of operation, not merely because the amount of bandwidth simply changed, but rather because the type and level of service changed to accommodate the operation (column 28, lines 40-46, provide a guaranteed bandwidth with minimum jitter dynamically at the detected start of a voice over IP session).